THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos.7817, 1519, 3262, 6237, 7785, 7786, 9301, 13067 and 13075 of 2006; 10763, 25467 and 27516 of 2005; 16741, 19273 and 20140 of 2004

DATED: 23.02.2007

Between:

P. Jaya Kumar and others. .. Petitioners.

And

The Government of India Ministry of Personnel
Public Grievances and Pensions
(Dept. of Personnel and Training)
Rep. by its Secretary, New Delhi and others .. Respondents.

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COMMON ORDER:

Inasmuch as common questions on similar set of facts arise for consideration in this batch of cases, they are being disposed of by this common order.

In this batch of cases, all the petitioners are members of the Central Industrial Security Force, and among them are Constables, Head Constables, Assistant Sub-Inspectors etc. They question the validity of the orders passed by the respondents for recovery of certain financial benefits given to them, under a scheme called "Assured Career Progression Scheme" (hereafter referred to as ACP Scheme)

For the sake of convenience in disposal of this batch of cases, I refer to the fact-situation in W.P.No.7817 of 2006. The petitioner was appointed as a Constable in the Central Industrial Security Force on 24.04.1985 by way of direct recruitment and is presently working as such in the third respondent unit. Based on the recommendations of the 5th Central Pay Commission, the first respondent-the Government of India, Ministry of Personnel, Public Grievances and Pensions Department, has introduced the ACP Scheme for the Central

Government Civilian Employees. The main object of the Scheme is to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. As per the said scheme, those who fulfill the pre-requisites for extension of benefits will be granted financial upgradation. For the benefit of extending the scheme, respondents have notified certain conditions. One such condition, which is relevant for the disposal of this batch of cases is condition No.6 in the annexure-I to the Office Memorandum, dated 09.08.1999, issued by the Government of India. As per condition No.6, the Scheme will be extended to those, who fulfill normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) Though, initially, the scheme was introduced for the benefit of Central Government Civilian Employees, however, by circular instructions, dated 18.02.2000, the benefits under the said scheme are extended to the members of the Central Industrial Security Force. In normal course, as per the Recruitment and Promotion Rules, for promotion from the post of Constable to Head Constable, a Constable must have completed eight years of regular service in the rank of Constable, must be in the medical category of SHAPE-I and must have successfully qualified in the Promotion Cadre Course of Head Constable. Though circular instructions have been issued for extension of the benefits of ACP to the Central Industrial Security Force, but the extension of the same would have to be considered only after passing the PCC. But, however, in this case, the petitioner and similarly placed persons were extended the benefits under ACP Scheme with effect from 09.08.1999, subject to the condition that they should pass PCC whenever they are detailed for such course. Subsequently, on the ground that the petitioner did not pass in the said course i.e., PCC, benefits were

withdrawn from the individual with effect from 01.07.2002. Again the individual had attended the course for second time and qualified in such PCC course on 29.11.2002. Thereafter, again his claim was considered in the next departmental promotion committee and he was extended the benefits of the scheme again from 07.07.2003. Though, initially, there was no move to recover the benefits paid to the petitioner in the above said scheme from 01.07.2002, but, subsequently, based on audit objection, recovery proceedings were initiated to recover the monetary benefit extended to the petitioner under the said scheme from 09.08.1999 to 01.07.2002. In the impugned order, dated 24.12.2003, it is stated that after the financial upgradation was extended to the petitioner under ACP Scheme, the petitioner along with some others has been detailed to undergo Promotion Cadre Course. But, however, they have either submitted their unwillingness or failed in one or more subjects. Therefore, the date of withdrawal of the ACP benefits granted to the petitioner is modified from the date of failing in the PCC Course viz. 1-7-2002 to the date of granting the said benefits viz. 9-8-1999 as per the clarification issued by the CISF Headquarters, New Delhi, vide letter dated 7.11.2003.

It is the case of the petitioners that they were extended the benefits subject to the condition of passing the Promotion Cadre Course. But, in spite of the fact that they have passed within the permissible number of chances, the orders of recovery came to be passed. It is further submitted that no notices were issued before passing the orders of recovery and the primary authority and the appellate authority have not taken into account the circular instructions issued by the Department in CISF Circular No.ESTT.1/37/2005 dated 19.10.2005.

However, in the counter affidavit filed on behalf of the respondents, it is stated that the very benefit of financial upgradation as per the scheme is subject to fulfillment of normal promotion norms. As much as the petitioner did not pass when he was detailed to Promotion Cadre Course, orders were passed to recover the said amounts. It is further stated that as per the promotion rules, for promotion from the post of Constable to Head Constable, there is a requirement of passing of Promotion Cadre Course, and, as such, the petitioner was extended the benefit of upgradation subject to passing the PCC, and, as he failed to fulfill the said condition when he was detailed to undergo PCC course, recovery orders were passed.

In this case, it is not in dispute that in the very scheme itself, it is made clear that the benefits of upgradation have to be extended to those who fulfill the normal promotion norms. In the circular issued by the Director General of Central Industrial Security Force, dated 18-02-2000, though it is mentioned that those who have passed the promotion cadre course alone are entitled for the benefits of financial upgradation, however, fully knowing that the petitioners did not pass the test by that time, the benefit of upgradation was extended to them, subject to the condition that they shall pass in the PCC course whenever they are detailed for such course. In the CISF Circular No.ESTT.1/37/2005, dated 19.10.2005, it is made very clear that an employee will be given three chances to attend the PCC. It is apt to extract paragraph 3 of the Circular dated 19.10.2005.

> "A person will be given three chances to attend the PCC. Non-attendance of PCC on the basis of unwillingness will amount to loss of a chance. For example, if he submits Unwillingness to attend PCC for the first time, he would lose one of the three chances of

> attending PCC. Thereafter, he will be able to avail only two chances of attending PCC. Unwillingness, if tendered, should be unconditional which shall be examined on case to case basis and would be approved or rejected on merit by the concerned DIG. Exemption from PCC will be granted by the DIG concerned on the ground which are beyond the control of the personnel concerned e.g. deputation to outside India, administrative reasons, etc.

In this case, though, it is the case of the respondents that the recovery orders are passed because the petitioner did not fulfill the condition of passing of PCC Course when he was detailed at first instance, but however, it is not in dispute that subsequently, within the permissible chances as per the circular dated 19.10.2005, the petitioner is qualified in the said course. It is also not in dispute that subsequent to passing of the said test, again the benefits were extended from 07.07.2003 consequent to completion of PCC Course on 29.11.2002. Even in the initial orders extending the ACP Scheme benefits, there is no indication of recovery. It was merely indicated that if the candidate fails to comply with the condition of passing in PCC, then the benefits would be withdrawn. Even the respondents at first instance have rightly withdrawn the said benefit prospectively from the date of failing in the said Course. But however, it appears from the counter affidavit that the impugned recovery proceedings are initiated on the sole basis of a query raised by the audit department. In any event, as much as the petitioner already passed the test and all the employees can avail upto three chances to pass the said test as per the circular dated 19.10.2005, there appears no reason to recover the benefits of ACP extended to the petitioners. As the very object of the scheme is to extend the benefit to the personnel, who did not get the

promotion in normal course due to stagnation, recovery will run contrary to the said object. Further, it is also the case of the petitioner that these orders of recovery are passed without giving any prior opportunity and such an allegation of the petitioner is not disputed. A perusal of the order passed by the primary authority also gives no indication of giving any prior opportunity and notice to the petitioner before passing the impugned orders.

It is stated that in all the cases, no notice has been issued before passing the impugned order and the petitioners are similarly placed.

Therefore, for the aforesaid reasons, the orders of recovery as confirmed by the appellate authority are liable to be quashed. Accordingly, all the orders of recovery, as ordered by the primary authority and confirmed by the appellate authority, are hereby quashed. However, it is made clear that if any of the candidates have not passed within the prescribed three chances, it is open for the respondents to issue notice and pass appropriate orders.

Subject to the above directions, all these Writ Petitions are allowed to the extent indicated above. No order as to costs.

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(R.SUBHASH REDDY,J)

23.02.2007

v v